

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MURRAY A. GUDMUNDSON,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 1034

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

A formal hearing came on before Board members W. A. Gissberg (president) and Chris Smith on August 27, 1976 at Everett, Washington.

Murray A. Gudmundson (appellant) appeared pro se; Keith D. McGoffin appeared for respondent.

Having heard the evidence the Board makes the following

FINDINGS OF FACT

I

Pursuant to RCW 43.21B.260, respondent has filed a certified copy

1 of its Regulation 1 which we notice.

2 II

3 Murray A. Gudmundson, an employee of Sipco, Inc., a corporation
4 engaged in residential construction, acting without any knowledge of
5 the President of the corporation, ignited an outdoor fire on April 22,
6 1976 at 12811 - 54th Avenue S.E., Snohomish, Washington. Although his
7 primary purpose was to dispose of a tree stump, he utilized scrap lumber
8 and tar paper as fuel for the fire.

9 III

10 Respondent's Regulation 1, Sections 8.02(3) and (4) makes it unlawful
11 for any person to cause any outdoor fire containing any substance other
12 than natural vegetation which normally emits dense smoke. A fire is
13 also unlawful if for the purpose of demolition of materials.

14 IV

15 Respondent served its Notice of Violation on Murray Gudmundson
16 naming Sipco, Inc. and Murray Gudmundson as responsible for unlawfully
17 causing or allowing an outdoor fire in violation of Section 8.02(3) of
18 respondent's Regulation 1. Thereafter respondent purported to impose
19 a civil penalty of \$250.00 against "Gary Gudmundson dba Sipco, Inc."
20 and Murray Gudmundson. The former is President of the corporation.

21 V

22 Any Conclusion of Law hereinafter stated which may be deemed a
23 Finding of Fact is hereby adopted as such.

24 From these Findings the Pollution Control Hearings Board comes
25 to these

26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I

Appellant, Murray Gudmundson violated Section 8.02(3) of respondent's Regulation 1. However, he urges that the civil penalty should not be imposed upon his brother, Gary, who neither knew of nor authorized the fire but who was the President of Sipco, Inc.

II

The civil penalty imposed upon Gary Gudmundson should be stricken. A corporate officer who has neither knowledge of nor authorizes another corporate employee to act unlawfully is not responsible for such act. The doctrine of respondeat superior is not applicable under these circumstances.

The Notice and Order of Civil Penalty (R-4) does not impose any civil penalty or notice thereof to the corporation when in the form: "Gary Gudmundson dba Sipco, Inc."

III

The violation of Murray Gudmundson should be affirmed. However, it being his first violation of respondent's regulations, \$200.00 of the \$250.00 civil penalty should be suspended.

IV

Any Findings of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

1. The civil penalty imposed against Gary Gudmundson, d.b.a. Sipco, Inc. is stricken.

FINAL FINDINGS OF FACT,
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2. The violation of Murray Gudmundson is affirmed, but \$200.00 of the \$250.00 civil penalty is suspended upon condition that he incur no further violations of respondent's regulations for a period of six months from the date of this Order.

DATED this 13th day of September, 1976.

POLLUTION CONTROL HEARINGS BOARD

W. A. GISSBERG, Presiding Officer

CHRIS SMITH, Member

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